IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No. 25 of 2005

For Approval and Signature:

HON'BLE MISS JUSTICE R.M.DOSHIT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NANJIBHAI DARGAJI MARWADI & 5 - Applicant(s)

Versus

PRABHULAL PARSHOTTAMDAS PARIKH & 8 - Opponent(s)

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Appearance :

MS SADHANA SAGAR for Petitioner No(s): 1 - 1,2,3,4,5,6 - 6.

UNSERVED-EXPIRED (N) for Respondent No(s).: 1 - 5.

MR AR MAJMUDAR for Respondent No(s).: 2.

MR NK MAJMUDAR for Respondent No(s).: 2.

NOTICE SERVED for Respondent No(s).: 3, 4,5 - 5, 6,7.

None for Respondent No(s).: 5.

DELETED for Respondent No(s).: 8,9.

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CORAM :HON'BLE MISS JUSTICE R.M.DOSHIT

Date : 08/07/2005

ORAL JUDGMENT

Feeling aggrieved by the judgement and order dated 31st March, 2004 passed by the learned Joint District Judge, Nadaiad in Civil Appeal No. 93 of 2002, the

appellants – defendants nos. 4 to 9 in Regular Civil Suit No. 302 of 1985 have preferred the present Revision Application under Section 29 (2) of the Bombay Rents, Hotel & Lodging House Rates Control Act, 1947 {hereinafter referred to as, "**the Rent Act**'}.

By the judgement and decree dated 12th August, 2002 passed by the learned Civil Judge [SD], Nadiad in Regular civil Suit No. 302 of 1985, a decree for possession has been passed against the present petitioners on the ground that the petitioners were unlawful subtenants in the suit premises. The lower appellate Court has confirmed the said finding and the decree passed by the trial Court. Learned advocate Miss Sagar has relied upon the pleadings and the evidence on record. She has submitted that the petitioners were in occupation of the suit land for more than forty years i.e. Since prior to 1st May, 1959. She has submitted that in view of sub-section (2) of Section 15 of the Rent Act, no eviction decree can be passed against the petitioners.

I am afraid, I am unable to agree with Ms. Sagar. Both the Courts below have recorded concurrent finding that the petitioners had failed to prove that they were tenants in the suit premises prior to the commencement of the Bombay Rents, Hotel & Lodging House Rates Control [*Amendment*] Ordinance, 1959 i.e. 1st May, 1959. Both the Courts have rightly held that the onus to prove that the

petitioners were in possession of the suit premises prior to 1st May, 1959 lay on the petitioners and that the petitioners had failed to discharge the said burden. The petitioners having admitted that they were the sub-tenants and they having failed to prove their presence in the suit premises since prior to 1st May, 1959, the decree for eviction passed against them is just and proper. No case of interference is made out. The Revision Application is dismissed *in limine*. **Notice** is discharged. *Interim* relief; if any, stands vacated.

Learned advocate Ms.Sagar requests that the petitioners be given time to vacate and to hand over vacant possession of the suit premises to the landlord. Request is granted. The decree passed against the petitioners shall not be executed till 30th November, 2005 on condition that each petitioner shall, within fifteen days from today, give an undertaking to this Court in usual terms. Copy of the undertaking be given to the learned advocate Mr. Majmudar.

{Miss R.M Doshit, J.}

Prakash*